

Subject: Fw: AMTS B-block and A-block for SCRRA/PTC, via Contract with options, etc.
From: Warren Havens (warren.havens@sbcglobal.net)
To: Hills@amtrak.com; McCartT@amtrak.com; lmovshin@wbklaw.com;
Cc: Roger.Noel@fcc.gov; Lloyd.coward@fcc.gov; Richard.Arsenault@fcc.gov;
Patrick.McFadden@dbr.com; jstobaugh@telesaurus.com;
Date: Wed, 24 Aug 2011 15:13:58

AMTRAK representatives:

Samuel Hill, hills@amtrak.com

Theresa McCartney, mccartt@amtrak.com

Lawrence J. Movshin, lmovshin@wbklaw.com (counsel for FCC matters)

My companies hereby extend to AMTRAK a spectrum purchase offer substantially the same as presented below to SCRRA.

(The previous offer is also indicated below, involving no or substantially no cost.)

This is even more applicable to AMTRAK in NE Corridor as compared to SCRRA, since in the NE Corridor:

1. DC up to Philadelphia-north:

SkyTel has the AMTS B-block geographic spectrum now. SkyTel has claims to the A-block geographic spectrum pending in timely Application for Review and other petitions before the FCC, as the lawful high bidders in Auction 61 (there is no "return" of the spectrum to the FCC, for re-auction or "reallocation" if SkyTel entities were lawful high bidders).

2. Philadelphia-north up to Boston-north:

SkyTek has the AMTS B-block and A-block geographic spectrum now.

Below indicates relevant new information as to site-based encumbrances.

If AMTRAK has any interest, please let me know within 10 days.

I would be happy to discuss reasonable alternatives. (On that point, as I made clear before to AMTRAK in writing, it is not "commercially reasonable" or otherwise reasonable or acceptable for AMTRAK to require that SkyTel give up its valid claims against Maritime, as AMTRAK asserted before the FCC. You are of course aware of FCC 11-64 and the Hearing under it.)

If I do not get a response, I will take it that AMTRAK has no interest.

A copy of the below SCRRA Offer, and this Offer to AMTRAK, will be filed in FCC docket 11-79.

Sincerely,
Warren Havens

ps: I will later address issues in the AMTRAK presentation under cover letter dated Aug 17, 2011 (with , in this docket, as to its lack of conformance with FCC rules, mischaracterization of my companies past spectrum offers to AMTRAK, collateral ex parte attack, by "reallocation" argument, on SkyTel's FCC petitions challenging the Maritime's AMTS licenses and claims to the spectrum as lawful high bidders, etc. SkyTel requests that AMTRAK deal with contested matters openly, professionally, and in accord with FCC law.

But I cc here several of the FCC staff persons you copied on this presentation, to inform them of these matters, since they relate to your August 17 letter presentation including its attachment.

Railroad do not need spectrum in same range as PTC220, for PTC (or, as all of you know, for new wireless which, as a minor-capacity application, can include PTC):

- SkyTel has shown that in other presentations, and does not waive any of that here.

- However, this is a offer to provide spectrum that you assert you need, and gives you flexibility so that you will have no material downside if you enter a Contract as proposed.

----- Forwarded Message -----

From: Warren Havens <warren.havens@sbcglobal.net>

To: "brozowskik@scrra.net" <brozowskik@scrra.net>

Cc: feldman <feldman@fhhlaw.com>; Steven D. Miller <SMiller@hansonbridgett.com>; "Patrick.McFadden@dbr.com" <Patrick.McFadden@dbr.com>; "jstobaugh@telesaurus.com" <jstobaugh@telesaurus.com>

Sent: Wednesday, August 24, 2011 1:30 PM

Subject: Re: AMTS B-block and A-block for SCRRRA PTC, via Contract with options, etc.

SCRRRA,

Further, I meant to have included in the email below, and do so now, that, in addition to the below offer, my companies ("SkyTel") have an open offer to US metro passenger railroads to supply 217-222 MHz spectrum for PTC at no or substantially no cost to the railroads. See SkyTel filings in FCC docket 11-79, including our July 12, 2011 "Proposal and Request for Further Notice." This is based upon certain alternative spectrum we would accept if the FCC provided that (that would not involve reallocation or taking of spectrum from any entity and would otherwise be in the public interest).

Thus, by this outstanding offer just noted above, and by the below offer for cash purchase, we are offering two means for SCRRRA, and all other US metro passenger railroads, to obtain spectrum for PTC at this time.

Also, a copy of this email will be placed in docket FCC 11-79, including to keep the FCC informed.

- W. Havens

From: Warren Havens <warren.havens@sbcglobal.net>

To: "brozowskik@scrra.net" <brozowskik@scrra.net>

Cc: feldman <feldman@fhhlaw.com>; Steven D. Miller <SMiller@hansonbridgett.com>; "Patrick.McFadden@dbr.com" <Patrick.McFadden@dbr.com>; "jstobaugh@telesaurus.com" <jstobaugh@telesaurus.com>

Sent: Wednesday, August 24, 2011 12:07 PM

Subject: AMTS B-block and A-block for SCRRRA PTC, via Contract with options, etc.

Via: SCRRRA Board Secretary

brozowskik@scrra.net

1-213-452-0255

To: Richard Katz Chair, SCRRRA Board of Directors
Member, Los Angeles County Metropolitan Transportation Authority (Metro)
Board of Directors
City of Los Angeles Mayor Appointee

To: Patrick Morris Vice-Chair, SCRRRA Board of Directors
Member, San Bernardino Associated Governments (SANBAG) Board of Directors
Mayor, City of San Bernardino

cc: Paul Feldman, outside legal counsel to SCRRRA (FCC matters)
cc: Steven D. Miller, outside legal counsel to SCRRRA
cc: Patrick McFadden, outside legal counsel the SkyTel (undersigned companies)

Gentlemen,

This is an offer from SkyTel to SCRRRA of FCC licensed radio spectrum in the 220 MHz range for SCRRRA PTC.

Please forward this to appropriate persons with or representing SCRRRA to review this matter.
(My office may send copies to others that appear appropriate also, if we find them.)

SCRRA has stated to the FCC and other entities that it seeks FCC-licensed radio spectrum in the 217-222 MHz range.

It arranged to purchase spectrum from Maritime Communications Land Mobile LLC ("Maritime").

That involves the AMTS A-block spectrum in lower 200 MHz.

The Maritime spectrum is subject to various proceedings before the FCC.

This includes a formal Hearing under FCC 11-64

(in which discovery is proceeding as to the Parties. SCRRA is a Party, as are my companies listed below. Our attorneys will arrange to efficiently cooperate with SCRRA in discovery issues at an appropriate time.)

Two companies I manage, among those listed at the end below, hold the AMTS B-block spectrum in California.

Two of our companies were also the lawful high bidders in the FCC auction for the spectrum held by Maritime, including what it sold to SCRRA.

That is indicated in FCC 11-64 and in our petitions before the FCC on this subject.

In recent months, evidence has been found and presented to the FCC as to:

- the AMTS B-block in California (including SCRRA region) not being encumbered by any lawful (actually lawfully built and maintained) site-based "incumbent" stations, which we believe will result in our AMTS licensing being usable in SCRRA areas; and
- the Maritime disqualification to hold its currently held AMTS A-block licenses due (among other things) to its cheating in the FCC AMTS auction against my companies, which we believe will result in our companies eventually obtaining these licenses, also, including in the SCRRA area.

For Skytel, I propose, if SCRRA believes it needs 217-222 MHz spectrum (for its PTC program or otherwise), the following.

Enter a spectrum purchase contract with Skytel ("Contract") --

(1) for spectrum in the AMTS B-block, subject to final clearance of incumbent stations (but as I could explain, it is effectively cleared now), and

(2) for spectrum in the AMTS A-block, if SkyTel prevails in obtaining this, as indicated above, and if the B-block incumbent stations are not cleared first.

- All pricing and terms would be agreed to.
- SkyTel may agree in the Contract that SCRRA could have the option to terminate the contract even if the above noted contingencies are satisfied, in exchange for release of a sum to be put into escrow. SCRRA may exercise this option for any reason, including if it succeeds in obtaining by final FCC action the spectrum from Maritime indicated above.

For such a Contract, if timely entered, SkyTel would offer a price in the general range that is involved in the SCRRA contract with Maritime, but would include in the contract a right to proceed against Maritime for damages (the Maritime price is not fair market value for many obvious reasons).

- (We do not know if SCRRA has viable damage claims against Maritime, but if it does, it may factor that in.)
- We would offer this since, as stated to the FCC (and to SCRRA) in various FCC filings, our companies are involved in wireless for Intelligent Transportation Systems, and while we disagree with the SCRRA pursuit of the Maritime spectrum (for legal, public-policy, California law, and other reasons), we may advance our positions before the FCC, US DOT, etc. by this arrangement.
- SkyTel would commit to using some of the sale proceeds for publicly disclosed California Intelligent Transportation System (ITS) research, via the Skybridge Spectrum Foundation, an IRS Sec. 501(c)(3) nonprofit dedicated to wireless for ITS. (Skybridge is a company I manage, listed below, and holds some of the AMTS B-block in California.) Skybridge is doing this anyway, but it is still a benefit to California ITS of which SCRRA PTC is a part.

SkyTel would not require in the Contract that SCRRA abandon its pursuit of the Maritime spectrum, and SkyTel would not give up our challenge of that, or any other challenge before the FCC or other entity related to that.

We would not require the Contract to be confidential, but it would be public.

By securing the above indicated Contract, SCRRA would secure AMTS spectrum, whether Maritime or SkyTel prevails as to the A-block, and also, as an alternative the AMTS B-block. As to the latter, we will be submitting to the FCC a certain petition to find automatic termination of the incumbent stations based on newly found evidence, much of which we recently filed with the FCC.

I do not see a downside for SCRRA if it enters such a Contract.

There is obvious upside, including a more secure radio-spectrum platform to pursue and secure for use funding for PTC development and deployment.

This email is not confidential.

SkyTel may use this email before the FCC, DOT-FTA, etc. to demonstrate availability of spectrum for PTC. We are sending somewhat similar offers to other public passenger railroads. While these offers are in good faith on the SkyTel side, I also note that, based on public evidence, it appears that many railroad entities are not honestly presenting to the FCC, FTA, APTA, etc. the relevant facts and their actual plans and issues. PTC is an unfunded (or not fully funded) Federal mandate. Some railroads appear to *want to have and artificially project* problems as to why they then cannot meet the mandate, such as lack of radio spectrum (and that only PTC220-based radio equipment is viable, and that is behind, etc.), as a means to get more funding to go with the mandate. In any case, these offers are in good faith, and will at minimum help to clear up spectrum-availability issues, whether accepted or not.

If SCRRRA has any interest, please let me know within 10 days.
If I do not get a response, I will take it that SCRRRA has no interest.

Sincerely,
Warren Havens

President
Skybridge Spectrum Foundation
ATLIS Wireless LLC
V2G LLC
Environmentel LLC
Verde Systems LLC
Telesaurus Holdings GB LLC
Intelligent Transportation & Monitoring Wireless LLC
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